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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/128,753	08/04/1998	DONALD V. LIGHTCAP, JR.	DVL-003PAT	3373

7590 01/29/2003  
MARK F. SMITH  
SBTECHNOLOGY LAW  
7577 CENTRAL PARK BLVD  
SUITE 102  
MASON, OH 45040

EXAMINER

PRYOR, ALTON NATHANIEL

ART UNIT PAPER NUMBER

1616

DATE MAILED: 01/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
09/128,753

Applicant(s)  
Lightcap et al

Examiner  
Alton Pryor

Art Unit  
1616



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Jul 16, 2002
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7-13, 15-43, and 45-47 is/are pending in the application.
- 4a) Of the above, claim(s) 34 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 33 and 36-41 is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-13, 15-27, 35, 42, and 43 is/are rejected.
- 7) ☒ Claim(s) 28-32 and 45-47 is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

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Applicant's arguments filed 7/16/02 have been fully considered but they are not persuasive.

I. Rejection of claims 25-27 under 35 U.S.C. 103(a) will be maintained in light of amendment filed 7/16/02 for reason on record and reason as follows.

Applicant argues that no teaching or suggestion in the cited art would motivated one skilled in detergents to modify the teachings of the cited prior art to arrive at an invention for protecting plants from freezing temperature. Examiner argues in a claim to a composition a statement of whether the composition is used as a detergent or as a plant protectant has no patentable significance.

Applicant argues that instant claims recite an invention comprising crude vegetable oil which is different from vegetable oil. It is important to note that crude vegetable is a form of vegetable oil. And broadly viewing claim, the vegetable oil taught by the prior art would read on crude vegetable oil in the instant claims.

II. Rejection of claims 35,42-44 under 35 U.S.C. 103(a) will be maintained in light of amendment filed 7/16/02 for reason on record and reason as follows

Applicant argues that vegetable oil is the pesticide of the claims. However, Examiner argues that claims use the language "comprising" which leaves claims open to other pesticides.

III. Claim Objection / Allowable Subject Matter on record will be maintained as indicated in paper no. 15.

IV. Rejection of claims 1-5,7-13,15-24 under 35 U.S.C. 112, 1st and 2nd paragraphs will be maintained for reasons on record. Examiner suggests that Applicant amends specification to list

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compounds that would be considered foaming agent and emulsifiers. Examiner suggests that Applicant deletes "particularly" from the phrase "particularly suitable" of amended specification. See paper 18.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CAR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CAR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

***Telephonic Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton Pryor whose telephone number is (703) 308-4691. The examiner can normally be reached on Monday through Friday from 8:00 a.m. to 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees, can be reached on (703) 308-4628. The fax phone number for this Group is (703) 308-4556.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1235.



Alton Pryor

Primary Examiner, AU 1616

**ALTON N. PRYOR  
PRIMARY EXAMINER**

1/22/03